

**FILED UNDER SEAL
NOT TO BE DOCKETED**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Michael A. Shipp
	:	
v.	:	Crim. No. 3:24-00128
	:	
ELIYAHU "ELI" WEINSTEIN, a/k/a "Mike Konig," and	:	
	:	
ARYEH ("ARI") BROMBERG Defendants.	:	

**GOVERNMENT FILTER TEAM'S SEALED MOTION FOR REJECTION
OF ATTORNEY-CLIENT PRIVILEGE CLAIM OR, ALTERNATIVELY,
FOR APPLICATION OF THE CRIME-FRAUD EXCEPTION**

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PRELIMINARY STATEMENT

On April 10, 2024, the Prosecution Team filed a motion for rejection of the attorney-client privilege claims of defendants Eliyahu Weinstein and Ari Bromberg over communications with Shlomo Erez. ECF No. 94 (the “Prosecution Team Motion”). The Prosecution Team made further submissions in support of that motion on May 3, 2024 (ECF No. 102) and June 7, 2024 (ECF No. 107). Following oral argument on July 3, 2024, this Court denied the Prosecution Team Motion without prejudice, noting that it would “revisit this issue” should the Government “demonstrate and submit sufficient evidence and file an appropriate motion.” Oral Arg. Tr. at 68, ECF No. 128. The Court further noted it may be able to determine whether “there is a bona fide crime-fraud exception . . . after we’ve had a chance to see some of the documents.” *Id.* The Court also ordered Weinstein and Bromberg to produce their privilege logs to the Government. ECF No. 119.

On July 22, 2024, Weinstein produced a privilege log asserting privilege over 14,844 out of 19,205 messages—seventy-seven percent—of the primary message thread between Erez and Weinstein that was recovered from Erez’s Apple iPhone 14 (the “Message Thread”), which was seized by the Government on July 19, 2023. However, there is not even a colorable claim of privilege for a single communication Weinstein logged as “privileged.”² Indeed, the Message

² Weinstein asserted privilege over messages in two additional message threads from Erez’s device, including one message thread between Erez and Weinstein containing 173 messages and one message thread between Weinstein,

Thread flatly contradicts Weinstein’s representations in his April 9, 2024 Declaration in support of his Response to the Prosecution Team’s Motion for Rejection of Attorney-Client Privilege Claim (“Decl.”). There is no evidence whatsoever, either within the Message Thread or otherwise, that Weinstein “engaged Erez” in Spring 2021 and “put him on a monthly retainer” to provide “legal advice.” Decl. at ¶¶ 2, 3, 7.

Instead, as the nearly-20,000 messages between Erez and Weinstein in the Message Thread make abundantly clear, Erez acted solely as a business partner and co-conspirator in Weinstein’s criminal business operations. Weinstein never retained Erez as counsel, never considered Erez to be his counsel in any legitimate sense, and never sought legal advice from Erez. Moreover, Erez never acted as an attorney nor provided any legal advice. Instead, Weinstein routinely communicated with Erez to further his fraudulent activities, including by expressly instructing Erez to lie about Weinstein’s identity, to lie to investors and co-conspirators about purported business deals, and to divert investor funds to business ventures never disclosed to investors and even to Weinstein’s personal use, including to purchase a \$34,000 diamond necklace-and-bracelet set for Weinstein’s wife. The Message Thread further demonstrates that Weinstein used Erez to keep his multi-million-dollar business deals secret from the U.S. Probation Office, which was charged with monitoring

Erez, and Bromberg containing 50 messages. As with the Message Thread described herein, none of those additional messages appear privileged.

Weinstein's compliance with his supervised release and court-ordered payment of over \$200 million in restitution to his prior victims.

Weinstein's assertions of privilege over his communications with Erez are baseless. Yet, they prevent the Prosecution Team from timely reviewing highly relevant, incriminating communications to which it is legally entitled pursuant to a judicially authorized search warrant and timely debriefing Erez in full, thereby thwarting the public's interest in the expeditious administration of justice.

For the reasons explained in this submission, the Filter Team now renews the application previously made by the Prosecution Team in the Prosecution Team Motion for a ruling that Weinstein's communications with Erez are not privileged and/or are subject to the crime-fraud exception. As the Message Thread demonstrates, there was never any attorney-client relationship between Weinstein and Erez, and even assuming such a relationship existed, the communications between Weinstein and Erez never solicited nor provided any legal assistance. Moreover, the communications furthered the crimes and fraud as alleged in the Indictment and are, therefore, subject to the crime-fraud exception.

On the same basis, the Filter Team now also renews the application made in the Prosecution Team Motion for a ruling that Weinstein cannot establish a joint-representation privilege. As articulated by Weinstein, Weinstein's joint-representation claim can hold only if Erez represented Weinstein individually.

Because no such attorney-client relationship ever existed and/or was vitiated by the crime-fraud exception, it follows necessarily that Weinstein's joint-representation claim should be rejected as well.

The requested rulings would dispose of the entirety of Weinstein's privilege claims, thereby enabling the Filter Team to timely release the implicated non-privileged materials to the Prosecution Team and allow the Prosecution Team to prepare for trial and satisfy its remaining discovery obligations.

I. Background

In July 2023, Weinstein, Bromberg, Erez, Joel Wittels, and Alaa Hattab were arrested and charged by complaint with: (1) conspiracy to commit wire fraud, contrary to 18 U.S.C. § 1343, in violation of 18 U.S.C. § 1349; and (2) conspiracy to obstruct justice, contrary to 18 U.S.C. § 1503, in violation of 18 U.S.C. § 371. *See* ECF No. 1. On February 20, 2024, a grand jury returned an Indictment charging Weinstein and Bromberg with:

- conspiracy to commit securities fraud, contrary to 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5, in violation of 18 U.S.C. § 371 (Count One);
- securities fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; and 18 U.S.C. § 2 (Count Two);
- conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349 (Count Three);
- three counts of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2 (Counts Four, Five, and Six); and conspiracy to obstruct justice, contrary to 18 U.S.C. § 1503, in violation of 18 U.S.C. § 371 (Count Seven).

ECF No. 85 (the “Indictment”). Hattab, Wittels, and Erez entered guilty pleas before this Court to Informations on November 2, 2023, March 27, 2024, and May 28, 2024, respectively.

In anticipation of Weinstein’s assertion of unsubstantiated claims of privilege given Erez’s Israeli law license, the Government assigned a Filter Team to review any potential privilege issues arising from the seizure of electronic devices over the course of this investigation. Seven months after charges were filed, on January 12, 2024, Weinstein for the first time asserted privilege over his communications with Erez, claiming Erez was his personal lawyer.

On January 17, 2024, the Prosecution Team conducted a proffer session with Erez limited to questions about whether he acted as a legal advisor over the course of the scheme. During that session, Erez denied representing or advising Weinstein or Optimus in any legal capacity. Erez admitted the same during his change of plea hearing before this Court on May 28, 2024. Among other things, Erez stated under oath that he never executed a retainer agreement with Weinstein or Optimus, never sent legal bills to Weinstein or Optimus, and has never been paid by Weinstein or Optimus for legal work.

On May 29, 2024, the Filter Team produced to Weinstein’s counsel all chat threads from Erez’s device in which Weinstein was a participant. On July 22, 2024, Weinstein’s counsel produced privilege logs for three of the chat threads, including a privilege log in which defense counsel asserted privilege

over 14,844 out of 19,205 messages of the Message Thread. As discussed below, these assertions are frivolous.

II. The Attorney-Client Privilege And Crime-Fraud Exception

As set forth more fully in the Prosecution Team Motion, the party invoking privilege, which “obstructs the search for the truth,” *In re Grand Jury Investigation*, 599 F.2d 1224, 1235 (3d Cir. 1979), bears the burden to show the privilege’s existence and application, *Matter of Bevill, Bresler & Schulman Asset Mgmt. Corp.*, 805 F.2d 120, 126 (3d Cir. 1986). Weinstein must establish both the existence of an attorney-client relationship and that communications were made “for the purpose of obtaining or providing legal assistance.” *In re Teleglobe Commc’ns Corp.*, 493 F.3d 345, 359 (3d Cir. 2007) (cleaned up). “[T]he bare assertion” of an attorney-client relationship is wholly insufficient to make this showing. *United States v. Carter*, 966 F. Supp. 336, 344 (E.D. Pa. 1997), *aff’d sub nom. United States v. Ellis*, 156 F.3d 493 (3d Cir. 1998). That definition excludes: (1) “conduit” information “transmitted to an attorney with the intent that the information will be transmitted to a third party,” *United States v. White*, 970 F.2d 328, 334 (7th Cir. 1992) (cleaned up); (2) actions taken by an attorney to transfer funds, *Dist. Title v. Warren*, 265 F. Supp. 3d 17, 23 (D.D.C. 2017); or (3) business advice, *United States v. Spencer*, 700 F.3d 317, 320 (8th Cir. 2012).

Even assuming Weinstein could demonstrate that he made communications in confidence to Erez for the purpose of obtaining or providing

legal assistance, the crime-fraud exception applies here. *See United States v. Zolin*, 491 U.S. 554, 563 (1989); *United States v. Doe*, 429 F.3d 450, 454 (3d Cir. 2005). “[A] reasonable basis to suspect that the privilege holder was committing or intending to commit a crime or fraud and that the attorney-client communications or attorney work product were used in furtherance of the alleged crime or fraud . . . is enough to break the privilege.” *In re Grand Jury (ABC Corp.)*, 705 F.3d 133, 153 (3d Cir. 2012). The reasonable basis standard does not require “evidence sufficient to support a verdict of crime or fraud or even to show that it is more likely than not that the crime or fraud occurred.” *Id.* at 153–54. The Third Circuit has made clear that “there is no heightened standard beyond the requisite *prima facie* showing” that “governs whether disclosure to the prosecution is permitted.” *United States v. Scarfo*, 41 F.4th 136, 175 (3d Cir. 2022), *cert. denied sub nom. Pelullo v. United States*, 143 S. Ct. 1044, 215 L. Ed. 2d 201 (2023).

Moreover, a court need not conduct a document-by-document analysis to conclude that the crime-fraud exception applies once the Government has made the required *prima facie* showing. *In re Chevron Corp.*, 633 F.3d 153, 167 n.19 (3d Cir. 2011) (“We do not suggest that *in camera* review is necessary in every case in which the crime-fraud exception is invoked, as a party may be able to satisfy both elements of the crime-fraud exception without resort to the privileged documents themselves.”).

An indictment charging the elements of the crime-fraud exception satisfies the reasonable basis test. *See United States v. Gorski*, 807 F.3d 451, 461 (1st Cir. 2015). That is because a grand jury issues an indictment upon a finding of probable cause, *Kaley v. United States*, 571 U.S. 320, 327 (2014), which means “a reasonable ground for belief of guilt,” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). Once the Government makes out a *prima facie* case, the burden shifts to the party defending the privilege to explain, “by evidence and argument,” why the privilege should remain intact. *Haines v. Liggett Grp. Inc.*, 975 F.2d 81, 97 (3d Cir. 1992), *as amended* (Sept. 17, 1992).

The Indictment in this case, which charges Weinstein with conspiracies and substantive fraud crimes, establishes a reasonable basis to believe that he committed crimes. *See generally* Indictment. Five defendants including Erez have already pled guilty to committing the same crimes alleged in the Indictment, and this Court found that their sworn allocutions created a sufficient factual basis for those pleas.

III. An Examination of The Erez-Weinstein Communications Demonstrates They Are Not Privileged and That They Furthered the Charged Conspiracies.

The Message Thread between Weinstein and Erez is replete with concrete examples of Weinstein and Erez’s joint participation in the fraud, including Weinstein’s directions to Erez to lie about Weinstein’s identity, to divert investor funds, and to make false representations to be forwarded to investors about where their money went. The Message Thread also makes plain that

Weinstein and Erez were co-conspirators and business partners and never had an attorney-client relationship. Moreover, even if Weinstein and Erez had an attorney-client relationship—they manifestly did not—defense counsel’s assertions of privilege are utterly baseless because none of messages even remotely involve Weinstein seeking, or Erez providing, legal assistance.¹

In this submission, the Filter Team highlights only some of Weinstein’s numerous baseless assertions of privilege. These examples are by no means exhaustive, but they themselves provide substantial evidence of the absence of any attorney-client relationship between Weinstein and Erez. They also provide not just the required reasonable basis to suspect, but overwhelming evidence, that Weinstein used his communications with Erez to further his fraudulent and criminal activities. *See In re Grand Jury (ABC Corp.)*, 705 F.3d at 153-54.

A. Weinstein Instructed Erez to Lie about Weinstein’s Identity.

Weinstein’s communications with Erez furthered the fraud insofar as Weinstein directly instructed Erez to shield Weinstein’s identity from Richard Curry by pretending to send a message from “Mike Konig.” As alleged in the Indictment, Weinstein used the alias “Mike Konig” to conceal his identity and his control of Optimus when communicating with lenders, potential investors, and business partners, including Curry. *See* Indictment at 1, 6. In addition, Weinstein and his co-conspirators allegedly used the alias to obstruct justice by hiding Weinstein’s assets from his prior victims to whom he still owes more than \$200 million in restitution and to conceal his business activities from the U.S.

Probation Officer monitoring his compliance while on supervised release. *Id.* at 2-3.

The Message Thread helps prove these allegations. For example, as seen in the messages below excerpted from the Message Thread, on August 4, 2022, Weinstein directed Erez to contact Eric Weiss, an attorney representing Curry and Chris Anderson. Ex. A at 1-2.

Sender	Timestamp ³	Content	Weinstein Claim
Weinstein (forwarded message)	8/4/2022, 11:18:40 PM	Eric Weiss	Not privileged
Weinstein (forwarded message)	8/4/2022 11:18:40 PM	attorney information for Shlomo	Not privileged
Weinstein (forwarded message)	8/4/2022 11:18:40 PM	weissericm@hotmail.com	Not privileged
Weinstein	8/4/2022 11:18:57 PM	Don't forget Mike Konig sent you	Privileged
Erez	8/5/2022 2:05:59 AM	Ok noted	Privileged

After forwarding Weiss's contact information, Weinstein instructed Erez to use Weinstein's alias: "***Don't forget Mike Konig sent you.***" (Emphasis added.) Erez responded "Ok noted." As indicated in the table above, Weinstein claims that exchange is somehow *privileged*.

³ All times for text messages are in Universal Time Zone 4 or 5, which are 4 or 5 hours ahead of EST, respectively.

One week later, as seen in the messages below, on August 11, 2022, Erez told Weinstein that he was going to speak with Weiss and Curry. Ex. A at 5-6, 11-12 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez	8/11/2022 9:54:56 AM	Richard [Curry] is going to be on the call	Privileged
Erez	8/11/2022 9:55:00 AM	Call me	Privileged
Weinstein (voice note)	8/11/2022 9:55:25 AM	Call me first please, call me first. ⁴	Privileged
Weinstein (voice note)	8/11/2022 9:56:44 AM	<i>Don't have any conversation with Richard before you talk to me. No conversation.</i> ⁵	Privileged
Weinstein	8/11/2022 9:58:38 AM	Mike Konig	Privileged

In response, Weinstein instructed Erez not to speak to Curry before speaking with him first. He then reminded Erez: “***Mike Konig***.” (Emphasis added.) This too is claimed by Weinstein as somehow privileged.

That same day, Erez reported back to Weinstein about his conversation with Weiss. Ex. A at 9 (voice note at 10:17:01 AM), 12 (translation and transcription). Weinstein and Erez then discussed next steps. Ex. A. 9-10, 12-14 (translation and transcription).

⁴ All voice notes cited in this motion have been transcribed.

⁵ In the excerpted messages included in this submission, messages and voice notes that were originally sent in Hebrew are italicized and have been translated by a certified translator. Ex. R.

Sender	Timestamp	Content	Weinstein Claim
Weinstein (voice note)	8/11/2022 10:18:17 AM	<i>Leave for me in English, this message on... My name is Mike, don't forget. Tell me that, "I spoke with Eric and . . ." . . .</i>	Privileged
Erez	8/11/2022 10:19:03 AM	K	Privileged
Erez (voice note)	8/11/2022 10:22:55 AM	Hi Mike. I just received you forwarded message via the WhatsApp... Thank you, Mike. If you have any more questions or someone from the team, let me know. Cheers, Bye."	Privileged

In response to Erez's report, Weinstein instructed Erez to provide his report in a voice note in English and reminded Erez for a third time to use his alias: "***My name is Mike, don't forget.***" Erez responded "K" and then sent a voice note to Weinstein in English with his report, which he began with "Hi Mike." He concluded the note with "Thank you, Mike. If you have any more questions so, someone from the team, let me know. Cheers, Bye." Again, Weinstein has asserted privilege over these communications.

These exchanges make several things clear. *First*, Weinstein's communications with Erez furthered the fraud alleged in the Indictment. Weinstein unmistakably and directly instructed Erez to shield Weinstein's identity by using the alias "Mike Konig" so that neither Curry nor his lawyer, Eric Weiss, knew they were dealing with the twice-convicted, serial fraudster Eli Weinstein. *Second*, these messages highlight the frivolous nature of Weinstein's privilege assertions. No legal advice is either sought or given in these messages. Counsel has not offered any explanation for why

communications in which Weinstein instructs Erez to lie about his identity while serving as the conduit for a potential business deal could possibly be attorney-client privileged.

B. Weinstein Directed Erez To Divert Investor Funds Related to the Fake Pharmex Deal.

Weinstein's communications with Erez also furthered the fraud insofar as Weinstein gave Erez detailed instructions to divert investor funds. As alleged in the Indictment, Weinstein perpetuated his fraudulent conspiracies, generally, by deceiving investors about purported deals, taking their money, not investing it as promised, and then diverting the money elsewhere. *See* Indictment at 2, 8-9. Although not specifically identified by name in the Indictment, one such purported deal that was part of the conspiracies was the fabricated "Pharmex deal."

1. *Optimus Touted the Pharmex Deal to Raise Investor Funds and Promised Exorbitant Returns.*

In communications with investors, Optimus touted the Pharmex deal as a great investment opportunity and promised an exorbitant rate of return. For example, in an email to a victim investor on December 16, 2021, Bromberg, copying Wittels, stated that the "Pharmex order is in the final phases of negotiation" and provided details about the purported deal. Ex. B.⁶ He further represented that "Optimus will be paying a 25% return on money invested." *Id.*

⁶ Bates No. US DOJ_011307.

Optimus also claimed to investors inquiring about their money that their funds had gone to the Pharmex deal. For example, one investor who emailed Optimus had been “asking for months now” about his invested funds. Ex. C.⁷ In response, an Optimus secretary explained that a portion of his funds “was invested into Pharmex.” *Id.* In fact, and as Weinstein well knew, the Pharmex deal never existed—instead, as discussed below, Weinstein directed Erez to divert those investor funds elsewhere, *including to the purchase of expensive luxury jewelry*, and then to draft misrepresentations to be sent to investors about where their money had gone.

2. *Weinstein Directed Erez to Divert \$3.95 Million of Investor Funds Away From the Fake Pharmex Deal.*

In mid-December 2021, Optimus transferred \$3,950,000 to Erez for a purported “Pharmex deal,” but Weinstein immediately directed Erez to divert the investor funds to other deals and personal expenses, including a \$34,000 diamond necklace and bracelet set for Weinstein’s wife. More specifically, on December 15, 2021, Wittels emailed Erez that he was wiring him \$3,950,000, in addition to \$750,000 he stated had previously been wired to Erez. Exhibit D at 1-3. Wittels specified the total amount of \$4,700,000 was to be used for the “manufacturing cost of 11,750,000 pieces that Tariq is responsible for.” *Id.* at 3. Erez sent screenshots of the email to Weinstein. *Id.* at 1. The next day, Optimus wired \$3,950,000 to Erez’s JPMorgan Chase Account with the memo

⁷ Bates No. US DOJ 008413.

“Pharmex deal.” Ex. E at 2.⁸ Notably, Erez’s account was a private checking account and not an attorney escrow account. Weinstein sent Erez a screenshot of the wire transfer. Ex. D at 9-10.

That very same day, Weinstein and Erez had detailed discussions about where this money would be wired—none of which was to “Tariq” for the purchase of masks (nor to satisfy Weinstein’s restitution order). Instead, as seen in the message below excerpted from the Message Thread, on December 19, 2021, Erez summarized how investor funds intended for “Pharmex” were diverted to numerous other people and deals. Ex. D at 40 (The “Summary Text”), 62-63 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez	12/19/2021 9:26:30 AM	3950 <i>Aziz</i> 1450 <i>Mike</i> 1450 <i>Gallagher</i> 583 <i>Mark</i> 100 <i>Shlomi</i> 45 <i>Necklace</i> 34 <i>Balance</i> 288	Privileged

In the Summary Text, Erez provided Weinstein a detailed breakdown of exactly where the \$3,950,000 went, including \$1.45 million to Aziz, \$1.45 million to Mike [Kogan], \$583,000 to Gallagher, \$100,000 to Mark [Pordes], \$45,000 to

⁸ Bates No. US DOJ 038150.

Shlomi, and \$34,000 for a necklace, with a \$288,000 balance—all of which Weinstein somehow claims as privileged.

The Message Thread makes clear that Weinstein directed Erez to send each of these wires, which fraudulently diverted investors' money. For example, on December 15, 2021, the very same day Wittels's email set forth the purported Pharmex deal, Weinstein ordered Erez to wire \$583,000 to Mark Gallagher. Ex. D at 4-5. Weinstein asserted privilege over these wiring instructions. Erez's financial records show that Erez did in fact wire \$583,000 to "Gallagher Capital LLC" on December 17, 2021. Ex. E at 2.

Sender	Timestamp	Content	Weinstein Claim
Weinstein (forwarded message)	12/15/2021 4:34:27 PM	Gallagher Capital LLC Chase BANK ABA: 021000021 Account Number: 761185351 Address: 395 N Service Rd, Ste 112-W, Melville NY 11747	Not Privileged
Weinstein	12/15/2021 4:34:39 PM	That's for 583	Privileged
Erez	12/15/2021 4:34:53 PM	Ok	Privileged

Another example of Weinstein directing the diversion of Pharmex investor funds occurred the following day, December 16, 2021, when Erez and Weinstein discussed a \$100,000 wire transfer to Mark Pordes, the Florida Realtor whom

Weinstein used to purchase a penthouse apartment in Florida with investor funds.⁹ Ex. D, at 11-13, 61 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez	12/16/2021 7:03:15 AM	<i>Eliyahu. Regarding Mark, [we] have to wire 100. I don't see it on my side yet, Can Mike wire it? So that we won't miss it? Or should we wait some more?</i>	Privileged
Weinstein	12/16/2021 7:20:20 AM	Either way we need to wait until 9	Privileged
Erez	12/16/2021 7:20:42 AM	<i>It arrived...</i>	Privileged
Erez	12/16/2021 7:20:54 AM	<i>Update me whether to go forward with Mark</i>	Privileged
Weinstein	12/16/2021 7:21:10 AM	You do it	Privileged
Weinstein	12/16/2021 7:21:15 AM	Yes	Privileged
Erez	12/16/2021 7:21:32 AM	Ok	Privileged

Specifically, Erez wrote “*regarding Mark [we] have to wire 100*,” and informed Weinstein he had not yet received the funds in his account. He later confirmed the money had arrived and asked whether to proceed with wiring money to Pordes. Weinstein confirmed that Erez should proceed. Weinstein asserted privilege over these communications as well.

⁹ Weinstein and Erez discussed the purchase of the Florida penthouse extensively in the Message Thread. This purchase was never disclosed to investors. As alleged in the Indictment, Weinstein admitted he held an interest in the penthouse, nominally controlled by Erez, which he sought to shield from discovery to thwart the Government’s efforts to collect restitution for victims. See Indictment at 25.

Later that day, Erez and Weinstein continued their conversation about diverting the funds. Ex. D at 16-17.

Sender	Timestamp	Content	Weinstein Claim
Erez	12/16/2021 8:28:45 AM	Wire mark done	Privileged
Weinstein	12/16/2021 8:35:00 AM	Ty	Not privileged
Erez	12/16/2021 8:35:41 AM	Will do the others in an hour	Privileged
Weinstein	12/16/2021 8:35:57 AM	As soon as possible. Ty	Privileged
Erez	12/16/2021 8:36:10 AM	Sure	Privileged
Erez	12/16/2021 8:51:13 AM	Gallagher done	Privileged

Erez confirmed that he had wired \$100,000 to Mark Pordes, stating, “Wire mark done.” Erez’s financial records confirm that Erez indeed wires \$100,00 to Mark Pordes on December 16, 2021. Ex. E at 2. Weinstein thanked Erez and then urged him to finish the other wire transfers they had been discussing. Erez then confirmed that the Gallagher wire was complete as well. Erez later sent an image of the \$100,000 wire to Mark Pordes. Ex. D at 20-21. As noted in the table above, Weinstein—without any conceivable basis—asserted privilege over these discussion regarding wiring money to Pordes and Gallagher, although none involve legal assistance.

Erez also diverted, at Weinstein's direction, \$1,450,000 in investor funds intended for the "Pharmex deal" to Dr. Aziz, who facilitated Weinstein's purchase of land in Morocco.¹⁰ Ex. D at 31-33, 62 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez	12/17/2021 1:06:21 AM	<i>Dr. Aziz. I was able to wire 450. I'll wire to him on Saturday night and Sunday, another 500 500 450.</i>	Privileged
Erez	12/17/2021 1:13:27 AM	<i>Talk to me for a minute</i>	Privileged
Erez (forwarded message)	12/17/2021 6:03:47 AM	[Image of \$450,000 wire transfer to "Investment Buznika Morroco [sic]"]	Not privileged
Weinstein	12/17/2021 6:05:00 AM	WOW	Not privileged

On December 17, 2021, Erez confirmed that he had successfully wired Dr. Aziz \$450,000 and would wire an additional \$1,000,000 in two installments in the following days. He then shared an image of the \$450,000 wire transfer. Weinstein responded "WOW." Erez's financial records confirm that Erez did indeed wire \$450,000 for "Investment Buznika Morrocco [sic]" on December 16, 2021. Ex. E at 2. Erez's financial records further confirm that Erez wired approximately \$1 million dollars for the same Moroccan investment in three installments on December 20, 21, and 22, 2021. Ex. E. at 3.

Weinstein also directed Erez to use \$34,000 of the investor funds intended for the "Pharmex deal" to purchase a diamond necklace and bracelet for

¹⁰ The purchase of land in Morocco involving Dr. Aziz is discussed extensively throughout the Message Thread. This purchase was never disclosed to investors.

Weinstein's wife. The Filter Team is only providing the Court with a sampling of the detailed discussions between Erez and Weinstein regarding this jewelry purchase, noting that Weinstein has asserted privilege over the majority of them.

For example, on November 28, 2021, Weinstein sent a voice note asking Erez to inquire about a necklace, bracelet, and watches. Ex. F at 1, 28-29 (translation).

Sender	Timestamp	Content	Weinstein Claim
Weinstein (voice note)	11/28/2021 12:19:06 AM	<i>Good week, Shlomo. I hope everything's alright and the Sabbath passed nicely. Don't forget me regarding the bracelet and the bracelet and the necklace and whatever is there, from your friends. Watches too. Update me about what's there. Thank you very much. Have a good day.</i>	Privileged
Erez	11/28/2021 12:28:43 AM	<i>Good week. No problem. Tomorrow I'm meeting with him for you. We'll design something and send [it] to you.</i>	Privileged

In a voice note, Weinstein asked Erez to update him regarding a bracelet and necklace. Erez responded that he would meet with a jeweler the following day to design something for Weinstein. Weinstein's counsel offers no explanation for why communications involving Erez's functioning as Weinstein's personal shopper for high-end jewelry fall within the attorney-client privilege.¹¹

¹¹ Weinstein's counsel's privilege log asserts that each of these messages is an "Attorney-Client Communication re: Request and Provision of Transactional Legal Advice." The privilege log cites this identical basis for every single one of the 14,844 privilege assertions.

After discussing other wire transfers, Erez signed off for the evening: “Ok good night. Tomorrow will send you few options for your wife.” Ex. F at 4-5. Weinstein asserted privilege over this message as well.

Sender	Timestamp	Content	Weinstein Claim
Erez	11/28/2021 4:43:20 PM	Ok good night. Tomorrow will send you few options for your wife	Privileged
Weinstein	11/28/2021 4:44:11 PM	Ty	Not privileged

The following day, Erez provided details about a diamond necklace and bracelet available for purchase through an Israeli contact of his, Ex. F at 4-5, 29 (translation); Weinstein asserted privilege over Erez’s non-legal description of the jewelry.

Sender	Timestamp	Content	Weinstein Claim
Erez (forwarded message)	11/29/2021 5:01:40 AM	<i>Hi, 18 carat Italian bracelet, special processing with strength, 45 stones, 9 carat, cost about \$11,000, necklace 105 stones about 21 carats, cost about \$24,000. Like the bracelet, the diamonds are color grade F, vs clarity. If [I] get the OK today, it will be delivered by December 15. Thanks.¹²</i>	Not privileged
Erez (forwarded message)	11/29/2021 5:01:40 AM	[photo of diamond bracelet]	Not privileged
Erez (voice note)	11/29/2021 5:02:18 AM	<i>Hi Eliyahu, good morning. It's one for the wrist, a bracelet and the same thing she'll have for her entire neck. It's something very, very pretty. It's one of the “champs” that I rely on. I'll send you</i>	Privileged

¹² Per the translator’s note, the order of the words in this message is unclear due to the presence of both Hebrew and English in the same message. Ex. F at 29.

		<i>later a ring that I made for my wife about two years ago. It's workmanship like nothing else. He sells to store in, in... all over the world. This is uhm... This is the price but... Let's, let's talk. I just want to send it to you to see what it looks like.</i>	
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Erez then sent a series of photos of diamond necklaces and a diamond ring. Ex. F at 6-12. Erez and Weinstein proceeded to discuss further details of the jewelry. Ex. F at 12-18, 29-30 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez	11/29/2021 7:02:56 AM	<i>This is a ring that he made for my [romantic] partner. He does excellent work.</i>	Privileged
Weinstein	11/29/2021 8:34:14 AM	Did he give you a price for the necklace?	Privileged
Erez	11/29/2021 8:34:47 AM	<i>Yes, this is a price together for the bracelet and the necklace</i>	Privileged
Erez	11/29/2021 8:35:49 AM	<i>Tennis for the wrist and a matching necklace for the neck</i>	Privileged
Erez	11/29/2021 8:36:08 AM	<i>The necklace alone is 24</i>	Privileged
Weinstein	11/29/2021 8:37:09 AM	Are the stones big?	Privileged
Weinstein	11/29/2021 8:37:14 AM	It's beautiful	Privileged
Erez	11/29/2021 8:37:29 AM	<i>Yes, very beautiful</i>	Privileged
Erez	11/29/2021 8:37:52 AM	<i>20 points each Usually they make 10-15 points</i>	Privileged
Erez	11/29/2021 8:38:04 AM	<i>I asked for 20, so that it will stand out and be beautiful</i>	Privileged
Erez	11/29/2021 8:39:12 AM	<i>These are real diamonds. Many [people] do it with lab made diamonds because it makes it a lot cheaper It's not like one diamond that stands out</i>	Privileged

Weinstein	11/29/2021 8:39:32 AM	Ty	Not privileged
Weinstein	11/29/2021 8:39:32 AM	Ok	Privileged
Erez	11/29/2021 8:40:19 AM	<i>Let me know if you want [it]. If we give him an answer today, tomorrow, it will be ready on the 15th of the month or end of the month.</i>	Privileged
Weinstein	11/29/2021 8:40:27 AM	Yes	Privileged
Weinstein	11/29/2021 8:40:33 AM	I want it.	Privileged
Erez	11/29/2021 8:40:41 AM	<i>Okay, [I'm] ordering</i>	Privileged

Erez then commented on the ring photo and explained that the ring had been previously made by the jeweler for Erez and that he found it to be excellent quality. Erez and Weinstein then discussed quality and price of the diamonds, including Weinstein inquiring whether “the stones” were “big.” Erez asked whether Weinstein wanted the necklace; Weinstein responded “Yes,” “I want it.” Erez responded that he was ordering the diamond jewelry. Weinstein asserted privilege over this entire series of messages except for “Ty.”

On December 7, 2021, Erez alerted Weinstein that the necklace and bracelet would be ready at the end of the following week. Ex. F at 19, 30 (translation). Weinstein inexplicably asserted privilege over this message as well.

Sender	Timestamp	Content	Weinstein Claim
Erez	12/7/2021 10:41:38 AM	<i>The necklace and bracelet will be ready next weekend</i>	Privileged

On December 15, Erez discussed the final price of the necklace with Weinstein, which was \$33,800. Ex. F at 20-22, 30 (translation). Weinstein did not claim privilege over Erez's message but, for some reason, as set forth below, claimed privileged over his response, "Ok."

Sender	Timestamp	Content	Weinstein Claim
Erez	12/15/2021 8:42:19 AM	33800	Not privileged
Weinstein	12/15/2021 8:43:29 AM	Ok	Privileged
Erez	12/15/2021 8:44:34 AM	<i>It looks amazing</i>	Not privileged
Weinstein	12/15/2021 8:49:02 AM	Tysm	Not privileged
Erez	12/15/2021 8:49:46 AM	With pleasure you have very good wife big hurt [sic]	Not privileged
Weinstein	12/15/2021 8:50:07 AM	You're VERY right.	Not privileged

The next day, as noted above, Erez's Summary Text to Weinstein confirmed that Erez would use \$34,000 of investor funds for the Pharmex deal to purchase the jewelry. Ex. D at 40, 62-63 (translation).

On December 22, 2021, Erez and Weinstein discussed picking up the jewelry. Ex. F at 23-25, 31 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez (forwarded message)	12/22/2021 1:29:06 PM	<i>He'll come to pick up the jewelry in Manhattan</i>	Not privileged
Erez (forwarded message)	12/22/2021 1:30:17 PM	Malca Amit office Lobby floor 580 fifth ave New York	Not privileged

Erez (forwarded message)	12/22/2021 1:30:17 PM	<i>The corner of 47th Street and Fifth Avenue</i>	Not privileged
Weinstein (voice note)	12/22/2021 1:33:54 PM	<i>So this is the question, if I don't come and someone else will come. Let them put the address. . . Their license? What should I do?</i>	Privileged
Erez	12/22/2021 1:34:52 PM	<i>Yes, write down who's coming to pick it up, it will go out under his name. Photo of his driver's license or something</i>	Privileged
Weinstein	12/22/2021 1:35:58 PM	K	Privileged
Erez	12/22/2021 2:20:16 PM	<i>Eliyahu, send me the [information of] who will be picking it up as soon as possible so that it will arrive next Tuesday at the latest</i>	Privileged

After Erez forwarded a series of messages from the jeweler with pick-up instructions, Weinstein sent a voice note inquiring about sending someone else to pick up the jewelry. Erez responded that someone else could do so and that Weinstein would need to provide their identifying information. Weinstein asserted privilege over the messages between Erez and Weinstein arranging the jewelry pick-up.

On December 30, 2021, Erez asked if Weinstein's wife enjoyed the necklace, and Weinstein responded "BH."¹³ Ex. F at 26-27, 31 (translation).

¹³ "BH" is a short form of "Baruch Hashem," a Hebrew phrase meaning "Thank God." See https://www.chabad.org/library/article_cdo/aid/606644/jewish/Why-Write-BH-or-BSD-at-Head-of-a-Letter-and-What-Does-It-Mean.htm

Sender	Timestamp	Content	Weinstein Claim
Erez	12/30/2021 8:09:54 AM	<i>How is the necklace? Pretty?</i>	Not privileged
Erez	1/2/2022 11:03:46 AM	<i>Good week, Eliyahu. How was the celebration?</i>	Not privileged
Weinstein	1/3/2022 12:32:55 AM	Beautiful	Not privileged
Weinstein	1/3/2022 12:32:56 AM	Ty	Not privileged
Erez	12/30/2021 8:09:54 AM	<i>Good morning. Excellent. Did [your] wife like the necklace and the bracelet?</i>	Not privileged
Weinstein	1/3/2022 12:39:29 AM	BH	Not privileged

These messages make plain that Weinstein used Erez not as his lawyer, but as his business partner, co-conspirator, and personal shopper to purchase diamond jewelry for his wife using diverted investor funds. None of these messages appear to be attorney-client privileged communications; they do not even remotely involve the request or provision of legal assistance. They are also plainly in furtherance of their fraud. These communications show that Weinstein’s assertions that Erez acted as “transactional counsel” who provided “legal advice and services regarding business transactions” is baseless. Weinstein Opp. Br., ECF. No. 103 at 7-8. Weinstein never sought, and Erez did not provide, legal advice about diverting investor funds to other parties or to the purchase of diamond jewelry.

3. *Weinstein Instructed Erez to Lie to Bromberg about the Pharmex Funds.*

Weeks after directing Erez to divert the Optimus investor funds intended for the Pharmex deal as described above, Weinstein ordered Erez to lie to

Bromberg to keep him in the dark about the fact that \$3.95 million of the \$4.7 million Wittels intended be used for the purchase of masks from Tariq had been diverted elsewhere, and that no masks had gone to Pharmex. Ex. D at 41-44, 63 (translation).

Sender	Timestamp	Content	Weinstein Claim
Weinstein	1/14/2022 1:14:32 AM	Please don't answer Ari	Privileged
Weinstein	1/14/2022 1:14:40 AM	He asked for your number	Privileged
Weinstein	1/14/2022 1:14:55 AM	I told him you're not on [sic] Israel	Privileged
Weinstein	1/14/2022 1:15:12 AM	And send me a number for Avi	Privileged
Weinstein	1/14/2022 1:15:14 AM	Ty	Not privileged
Weinstein	1/14/2022 1:18:02 AM	Remember if Ari does reach you somehow. You can't discuss anything with him because he is under the assumption that you released 4.7 to Tariq for masks going to Israel.	Privileged
Weinstein	1/14/2022 1:18:06 AM	So be very careful	Privileged
Weinstein	1/14/2022 1:18:21 AM	If he calls	Privileged
Weinstein	1/14/2022 1:18:27 AM	You're in France	Privileged
Weinstein	1/14/2022 1:18:56 AM	And if he asks for phone numbers of Rami or Avi tell him you need my permission	Privileged
Erez	1/14/2022 1:29:44 AM	<i>Good morning</i>	Not privileged
Erez	1/14/2022 1:30:29 AM	<i>Alright. I'll have a number in the next two hours</i>	Privileged

On January 14, 2022, Weinstein instructed Erez not to respond to Bromberg's call. Weinstein said "Please don't answer Ari" who had "asked for your number." Weinstein explained "Remember if Ari does reach you somehow. You can't discuss anything with him because he is under the assumption that you released 4.7 to Tariq for masks going to Israel." Weinstein also instructed Erez to lie about Erez's whereabouts: Weinstein had told Bromberg that Erez was not in Israel. If Bromberg did ever reach Erez, Erez should say he was "in France." Without explanation, defense counsel asserted privilege over this entire conversation except for Weinstein's "Ty" and Erez's "*Good morning.*"

4. *Weinstein Instructed Erez to Sign a Fraudulent Letter to Investors about the Fake Pharmex Deal.*

Months later, Optimus investors were growing increasingly concerned about the Pharmex deal. To appease them, in April 2022, Weinstein instructed Erez to affix his professional header (*i.e.* his legal title) and signature to a letter lying to them. Ex. D at 45-46.

Sender	Timestamp	Content	Weinstein Claim
Weinstein (forwarded message)	4/15/2022 12:53:27 AM	These can be sent to Shlomo Erez. We can either turn the PDF into a forwarded email or he can modify the Word Docx to add his letterhead	Privileged
Weinstein (forwarded message)	4/15/2022 12:53:27 AM(UTC-4)	[Word attachment titled "Shlomo Erez email re: Pharmex.docx"]	Privileged
Weinstein (forwarded message)	4/15/2022 12:53:27 AM(UTC-4)	[PDF attachment titled "Shlomo Erez email re: Pharmex.pdf"]	Privileged

On April 15, 2022, Weinstein forwarded a series of messages to Erez attaching a draft letter and asked Erez to sign it. The draft purported to be written by Erez to Bromberg and Wittels. However, Wittels had generated the draft letter in the first instance and forwarded both the Word document and PDF to Weinstein. Weinstein then forwarded this message to Erez. The draft letter, which purported to be from Erez, stated that Erez is “memorializing herewith the sequence of events related to the Pharmex transaction.” Ex. D at 47. The letter discussed the purported acquisition of masks being sold to Pharmex and financing issues supposedly caused by the Russia-Ukraine war. The letter claimed Erez had secured alternate financing and that “monies, will be paid to Optimus as follows: on or about May 31, 2022, 30% of the remaining balance; approximately 21 days later, an additional 40% of the remaining balance.” Ex. D at 47.

At the time that Weinstein sent this draft letter to Erez, both Weinstein and Erez knew full well that money for the “Pharmex deal” had long since been diverted and spent elsewhere, that no money had gone to Tariq for masks, and that no “second delivery” existed. The claim that the Russia-Ukraine war had delayed a “second delivery” was simply manufactured from thin air to assuage investors that money would soon be coming to Optimus.

Weinstein then instructed Erez to send the email on his letterhead to Bromberg and Wittels. Ex. D at 48-50.

Sender	Timestamp	Content	Weinstein Claim
Erez	4/15/2022 1:33:07 AM	Good Morning	Privileged
Weinstein	4/15/2022 1:37:38 AM	Hi	Privileged
Weinstein	4/15/2022 1:38:04 AM	Can you send that email on your letterhead to Joel and Ari?	Privileged
Erez	4/15/2022 1:39:53 AM	Yes. What is Joel e mail? Same as Ari?	Privileged
Weinstein	4/15/2022 1:42:45 AM	You sent to both before	Privileged
Erez	4/15/2022 1:43:39 AM	OK will do	Privileged
Erez	4/15/2022 1:49:07 AM	Instead of monies should we say funds?	Privileged
Weinstein	4/15/2022 1:49:38 AM	I would leave it	Privileged
Erez	4/15/2022 1:52:35 AM	OK will send letter today	Privileged

Weinstein requested that Erez “send that email on your letterhead to Joel and Ari,” to which Erez responded “Yes” and asked for Wittels’s and Bromberg’s email addresses. Weinstein responded that Erez had previously emailed both. Erez then suggested one edit to the letter he purportedly wrote, which Weinstein rejected.

Weinstein asserted privilege over the entire thread. Notably, both Weinstein and Bromberg claim that Erez was Optimus’s lawyer. However, these communications make clear that Erez took instructions from Weinstein rather than from Bromberg or Wittels, who were the two principals of Optimus. Indeed, Erez didn’t even know Wittels’s and Bromberg’s email addresses. Moreover, when Bromberg and Wittels needed this letter to lie to investors, they

routed the request through Weinstein rather than asking Erez themselves. Had Erez actually been Optimus's lawyer, as Bromberg claims, Bromberg would have likely communicated with Erez directly.¹⁴

In any event, several hours later, Erez affixed his letterhead and signature to the Pharmex letter as requested. Ex. D at 51-54.

Sender	Timestamp	Content	Weinstein Claim
Erez (forwarded message)	4/15/2022 6:35:20 AM	[PDF attachment titled "Shlomo Erez email re Pharmex.pdf"]	Privileged
Erez	4/15/2022 6:35:37 AM	Need Joel mail	Privileged
Erez	4/15/2022 6:35:49 AM	Ari I have	Privileged
Weinstein (forwarded message)	4/15/2022 6:40:02 AM	shlomo@optimus-invest.com ari@optimus-invest.com	Privileged
Erez	4/15/2022 6:40:34 AM	Ok	Privileged
Erez	4/15/2022 6:40:48 AM	Joel is Shlomo Ok	Privileged
Weinstein	4/15/2022 6:41:21 AM	Ty	Not privileged

Erez forwarded a PDF copy of the letter with his letterhead and signature to Weinstein and again asked for Wittels's email address. Weinstein provided

¹⁴ This Motion responds only to Weinstein's claim of privilege over communications with Erez; it does not address Bromberg's privilege claim regarding Erez, and Bromberg is not a party to this sealed motion. The Government, either through the Prosecution Team or the Filter Team, expects to address Bromberg's privilege claims in a separate submission to which Bromberg will be a party.

the emails addresses. Once more, Weinstein asserted privilege over all messages except for “Ty.”

Immediately after this conversation, Weinstein acknowledged that the dates in the letter by which Erez promised Optimus payments from the purported alternate financing were wrong. Ex. D at 54-58.

Sender	Timestamp	Content	Weinstein Claim
Weinstein	4/15/2022 6:42:01 AM	Those aren't [sic] accurate dates. I still need money by 26th.	Privileged
Erez	4/15/2022 6:42:55 AM	I am working to push as to what we have discussed 26th	Privileged
Weinstein	4/15/2022 6:45:00 AM	Did Maria confirm when she will have?	Privileged
Erez	4/15/2022 6:47:13 AM	She can't commit to us at this amount yet have some progress with Swiss	Privileged
Erez	4/15/2022 6:49:24 AM	Letter been sent	Privileged
Weinstein	4/15/2022 6:57:40 AM	I figured	Privileged
Weinstein	4/15/2022 6:58:01 AM	When is your next talk with Aziz	Privileged
Weinstein	4/15/2022 6:58:14 AM	Can you speak with the bank there?	Privileged
Erez	4/15/2022 6:58:20 AM	Today afternoon	Privileged
Erez	4/15/2022 7:08:44 AM	Bank is not option for the 26th. Aziz should place a solution to what I suggested	Privileged
Weinstein	4/15/2022 7:22:55 AM	Ok	Privileged

Weinstein told Erez, “Those aren't accurate dates. I still need money by 26th.”

In other words, although the letter promised payment to Optimus by May 31, 2022, that was impossible because Weinstein needed more money in hand by May 26, 2022. Weinstein and Erez then proceeded to discuss different business

propositions to generate funds, such as the deal in Morocco involving Aziz. Weinstein asserted privilege over this entire conversation.

The letter that Weinstein instructed Erez to sign and place on his letterhead was then attached to an email sent by Bromberg and Wittels to Optimus investors. In the cover email to investors, Bromberg and Wittels represented that Erez “leveraged his relationships” to secure alternative financing of the Pharmex deal, which was a lie. Ex. G at 1.¹⁵ They also claimed, “Mr. Erez sent us a written communication to keep everyone updated about the alternative financing of the payment, which is attached hereto for your reference.” *Id.* Bromberg and Wittels then attached to the email they sent investors the letter that they themselves had drafted and sent to Weinstein for Erez’s signature. *Id.* at 3.

As the specific communications described above regarding the fake Pharmex deal make clear, none of Weinstein’s privilege assertions are valid, and many strain credulity. First, none demonstrate that Erez ever served as Weinstein’s or Optimus’s lawyer. None involve Weinstein seeking legal assistance or advice from Erez; none show Erez providing any. The only communications in which Erez’s status as an attorney is mentioned are those in which Weinstein and his co-conspirators attempted to assuage investors’ concerns by invoking Erez’s status as an attorney to give their fraudulent

¹⁵ Bates No. US DOJ_218159.

schemes the veneer of legitimacy. In reality, however, at Weinstein's direction, Erez was simply affixing his name and attorney title to communications replete with falsehoods drafted by Bromberg and Wittels, which Erez was not even permitted to edit. Such communications prove that Erez was not "transactional counsel" as Weinstein asserts. Weinstein Opp. Br., ECF. No. 103 at 7-8.

C. Weinstein Instructed Erez to Lie about a Harvard Medical Devices Deal.

Weinstein's communications with Erez furthered the fraud in yet a third way—Weinstein instructed Erez to draft a false email regarding a deal with an entity named Harvard Medical Supplies containing an inflated figure. Ex. H at 1-3.

Sender	Timestamp	Content	Weinstein Claim
Weinstein (forwarded message)	3/24/2022 6:27:34 AM	shlomo@optimus-invest.com ari@optimus-invest.com	Privileged
Weinstein (forwarded message)	3/24/2022 6:27:34 AM	@18482454452 ... Please have Shlomo Erez prepare the email stating that we received the \$1,600,000 Deposit for the Harvard PO on 02/15/2022	Privileged
Weinstein	3/24/2022 6:27:41 AM	Yes	Privileged
Weinstein	3/24/2022 6:27:47 AM	Need a letter	Privileged
Weinstein	3/24/2022 6:27:52 AM	Will call you soon	Privileged
Erez	3/24/2022 6:28:30 AM	Ok no problem It was 1.5	Privileged
Erez	3/24/2022 6:28:55 AM	Please take care of the wire	Privileged
Weinstein	3/24/2022 6:39:37 AM	Need to say 1.6	Privileged

As seen in the table above, on March 24, 2022, Weinstein forwarded Erez a message stating, “Please have Shlomo Erez prepare the email stating that we received the \$1,600,000 Deposit for the Harvard PO [purchase order] on 02/15/2022” (the “Harvard PO Email”). Weinstein asked Erez for the letter. Erez agreed to provide it but clarified that the deposit in fact was only “1.5.” Erez had only received \$1.5 million for this deal, not \$1.6 million as the forwarded message from Weinstein had instructed him to write. Indeed, as financial records show, Optimus wired \$1.5 million to Erez’s personal JPMorgan Chase account on February 18, 2022.¹⁶ Ex I. Weinstein, however, responded that the letter needed “to say \$1.6.” Ex. H at 3. In other words, Weinstein instructed Erez to inflate the amount of money involved in the purchase by \$100,000 even though Weinstein and Erez knew that was false. Weinstein asserted privilege over all of these messages.

Erez agreed to say “1.6” per Weinstein’s instructions. Ex. H at 4-7.

Sender	Timestamp	Content	Weinstein Claim
Erez	3/24/2022 6:41:02 AM	Ok 1.6 Should I write full details Meaning PO 300k units flow flex wired to pre tech company?	Privileged
Weinstein	3/24/2022 6:42:28 AM	Good morning Joel and Ari, This is to confirm that I received the deposit of 1.6 million dollars against the PO from Harvard medical.....	Privileged

¹⁶ This is the same account into which Optimus deposited \$3,950,000 for the “Pharmex deal.” As noted above, this account was a personal checking account at JPMorgan Chase and not an attorney escrow account.

Weinstein	3/24/2022 6:42:39 AM	Something like that	Privileged
Weinstein (reply message)	3/24/2022 6:42:43 AM	No	Privileged
Erez	3/24/2022 6:43:55 AM	Ok I will draft and send you before I send them It was on The [sic] 18th not 15th	Privileged
Weinstein	3/24/2022 6:45:10 AM	It should say 15	Privileged
Weinstein	3/24/2022 6:45:13 AM	If ok	Privileged
Erez	3/24/2022 6:45:49 AM	Ok	Privileged

Erez asked whether the full, true details of the deal should be included in the message. Weinstein responded “No” and provided the wording for Erez’s message. Erez then said he would draft the email and run it by Weinstein before sending it to Bromberg and Wittels. Erez attempted to make another clarification that the money had been sent “on The [sic] 18th not 15th.” As noted above and confirmed by financial records produced to Weinstein, the \$1.5 million at issue was in fact wired on February 18, 2022, and not on February 15, 2022. Despite Erez’s attempt to correct the date, Weinstein responded “It should say 15,” again instructing Erez to lie in the message. Erez responded “Ok” and then sent a draft message to Weinstein for approval that included the false \$1.6 number and the false February 15 date. Weinstein has asserted privilege over the entire set of communications in which Weinstein instructed Erez to lie.

Weinstein and Erez then engaged in a back and forth; Erez sent drafts, and Weinstein repeatedly edited them. *See* Ex. H at 7-23, 31-32 (translations). These edits include, for example, Weinstein ordering Erez to “sign Advocate” and “Not attorney,” *id.* at 16, and Weinstein instructing Erez to send a separate email directing Bromberg and Wittels to redact the name on the purchase order and to keep it confidential, *id.* at 10. Weinstein asserts privilege over this entire conversation, other than two “Ty” messages.

Erez emailed the Harvard PO Email to Bromberg and Wittels, which was ultimately attached to a communication Curry and Anderson intended to send to investors on behalf of Tryon. Among other things, their cover email informed investors that “Harvard gave us a 1.6mm deposit to our *lawyer*, Shlomo Erez,” and “[h]ere is the deposit in our *Lawyers* account” with an image that purported to be a Wells Fargo account showing a transfer to Erez on February 15 in the amount of \$1,600,000. (Italics added.) Ex. J at 1-2.¹⁷ The attachment to the intended investor communication, as noted above, was false: Erez received \$1.5 million on February 18, 2022, not \$1.6 million on February 15, 2022, and the money was sent to JPMorgan Chase, not Wells Fargo. In fact, the Wells Fargo statement was fabricated in its entirety, and Weinstein himself had provided it to Curry and Anderson. On March 31, 2022, in a separate message thread that included Curry, Wittels asked “Mike Konig” whether he and Richard Curry

¹⁷ Bates No. US DOJ_007774.

should reach out to Erez “to arrange getting the screenshots we need for Richard’s investor.” Ex. K at 1.¹⁸ In response, Weinstein a/k/a “Mike Konig” said that Erez was traveling but that he “will get it though.” *Id.* The following day, Weinstein provided two screenshots that purported to be Erez’s account showing that \$1.6 million was deposited on February 15, 2022, in a Wells Fargo account. Ex. K at 1-3.¹⁹ However, these screenshots were fabricated, as is clear from the conversation between Erez and Weinstein and financial records described above.

Thus, the Harvard PO Email is yet another example of Weinstein using Erez to further his fraudulent schemes. Their communications show Weinstein explicitly asked Erez to repeatedly lie in a communication that was intended for investors. There is nothing to suggest that Erez was actually acting as an attorney for Weinstein. He was merely invoking his status as an attorney so that Weinstein and his co-conspirators could give their fraudulent schemes a veneer of legitimacy and appease investors’ concerns.

D. Weinstein Instructed Erez to Lie about the Maccabi Deal.

Weinstein also instructed Erez to draft a false email regarding a deal involving Maccabi, an Israeli insurance company. This deal, which was slightly

¹⁸ Bates No. US DOJ_086657.

¹⁹ Bates Nos. US DOJ_005765; US DOJ_005766.

before the timeframe of the charged conspiracies,²⁰ is relevant to Weinstein's privilege claim because it demonstrates again that Erez was never acting as an attorney and that his status as an attorney was relevant only insofar as Weinstein, Bromberg, and Wittels sought to use it to create an aura of legitimacy for their fraudulent business dealings. Ex. L at 1-2.

Sender	Timestamp	Content	Weinstein Claim
Weinstein (forwarded message)	11/4/2021 5:55:43 AM	<p>Subject: Macabi Deal - Escrow Confirmation</p> <p>Ari / Shlomo,</p> <p>It was a pleasure speaking with you today regarding the Kupat Cholim Maccabi deal for the KN95 masks.</p> <p>I write this to you to confirm the receipt of the 15% non-refundable deposit from NJKM, as noted in the agreement, in the amount of 5,612,753.55 Israeli Shekels.</p> <p>This money will be retained in escrow for the duration of the contract, to be returned to NJKM upon completing the purchase of all 11,617,000 masks.</p> <p>As per your request, in the event that NJKM does not complete their purchase, \$1,600,000 USD of these funds will be released to your investors, minus any funds they</p>	Privileged

²⁰ The charged securities fraud conspiracy allegedly started "at least *in or around* December 2021." Indictment at 6, ECF. No. 85. (emphasis added). The charged conspiracy to obstruct justice started "in or around December 2021." Indictment at 23. The communications regarding the Maccabi deal took place in November 2021.

		received during the operation of your contract. Sincerely, Shlomo Erez, ESQ	
Weinstein	11/4/2021 5:56:20 AM	Call you in a bit	Privileged
Erez	11/4/2021 5:56:31 AM	Ok	Privileged
Erez	11/4/2021 8:09:34 AM	Call me before 0900	Privileged
Weinstein (forwarded message)	11/4/2021 9:01:58 AM	This is for shlomo My email ari@optimus-invest.com And to cc shlomo wittels shlomo@optimus-invest.com	Privileged

On November 11, 2021, Weinstein forwarded a message to Erez with a draft email purportedly written by Erez to send to Bromberg and Wittels. The message purported to describe a conversation about a deal with Maccabi for KN95 masks and confirmed receipt of a deposit from NJKM for the masks. Weinstein also forwarded Erez the email addresses of Bromberg and Wittels so Erez could send them the message. Weinstein asserted privilege over this entire discussion.

Erez agreed to send the message and followed up with a voice note asking Weinstein for additional details. Ex. L at 3, 7 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez	11/4/2021 9:03:18 AM	Ok	Privileged
Erez (voice note)	11/4/2021 9:05:44 AM	<i>Eliyahu, talk to me because I must understand more. If someone calls [Stutters] calls or asks something, I need to know. I need to know more details. Okay, I'm going into a meeting,</i>	Privileged

		<i>so talk to me in about fifteen, twenty minutes. Bye.</i>	
Erez	11/4/2021 10:30:27 AM	Done	Privileged
Weinstein	11/4/2021 10:32:36 AM	Ty	Not privileged
Weinstein (forwarded message)	11/4/2021 10:50:02 AM	Four issues with the email: 1 - please correct Ari's email address 2 - please put our "Subject" line into the "Subject" of the email, and NOT in the body 3 - Either remove the website from the signature, or fix the website 4 - Remove our line "Shlomo Erez, ESQ", as that is already part of his email signature.	Privileged
Erez	11/4/2021 10:52:49 AM	Ok got it 20 min will do it calmly	Privileged

In his voice note, Erez explained he needed more information in case “someone calls or asks something” because Erez evidently knew nothing about the email that he purportedly wrote. Erez then indicated that he had sent the message. Weinstein followed up shortly with a forwarded message from Bromberg/Wittels issuing corrections to Erez’s email. Weinstein asserted privilege over this entire discussion except for “Ty.”

The purpose of this email purportedly from Erez, like the others described above, was to gain investor confidence by invoking Erez’s status as an attorney. Indeed, Bromberg forwarded Erez’s email to Curry, using Curry’s alias “Mike Henderson,” noting “Mike, here you go! I can also send the email from Shlomo as an attachment if you like.” Ex. M.²¹

²¹ Bates No. US DOJ 144371.

As these communications make clear, just as Erez had done for the Pharmex Letter and the Harvard PO Email, Erez sent the Maccabi deal email that was purportedly written by him but was in fact written by either Bromberg or Wittels. Erez sent the email as Weinstein instructed, even though it is abundantly clear from the Message Thread that he knew nothing about its contents and needed more information in case someone “asks something.” Furthermore, Weinstein was not seeking, and Erez was not providing, legal assistance. Instead, Weinstein and his co-conspirators used Erez’s status as an attorney to convey false legitimacy to the investors.

E. Weinstein Acknowledged That He and Hattab Lied about the “FAK” Deal and Instructed Erez to Talk to Hattab so that Weinstein and Hattab Could Get their Stories Straight.

Weinstein’s communications with Erez also furthered the fraud insofar as Weinstein acknowledged that he conspired with Hattab to lie to Curry and Anderson about a first-aid kit (“FAK”) deal and urged Erez to convince Hattab to talk to Weinstein so that they could get their stories straight. As alleged in the indictment, in and around May 2022, Weinstein (posing as “Mike Konig”) asked Anderson and Curry to raise money from investors to finance the purchase and delivery of three million FAKs to the United States Agency for International Development (“USAID”) to be distributed to Ukrainian people during the Russia-Ukraine war. Indictment at 11. Weinstein (posing as “Mike Konig”) provided Anderson and Curry information concerning the FAK deal to

help raise money from potential investors. *Id.* at 11-12. However, the entire FAK deal was allegedly fake. *Id.* at 12.

In October 2022, Weinstein became concerned because Curry was questioning him about details of the FAK deal. In the Message Thread, he explained to Erez in detail that Curry was questioning him about the FAK deal and that he and Hattab “have a side agreement” about what to say regarding how much money was put into the FAK deal. Ex. N at 1-2, 10-11 (transcriptions).

Sender	Timestamp	Content	Weinstein Claim
Weinstein (voice note)	10/28/2022 11:49:58 AM	<p>...[Richard] started calling me this week. How much was put into the FAK? And Alaa and I have a side agreement, but Alaa hasn't talked to me in two months...</p> <p>So, he asked me specifically how many pieces were made now. Alaa and I made up to say something. I don't know what Alaa is telling them or why he is asking me...</p> <p>They are telling you how he bought me this watch from your money. All the shit that he is saying is, I don't even understand why he would do that. We are in this together. He asked me to say something about the FAK. We made something up that we were gonna say. I never deviated from that...</p>	Privileged
Weinstein (voice note)	10/28/2022 12:01:18 PM	Alaa asked me to have a certain bond with him and to keep things between us. I've kept to that [stutters] till this very second and I will always do that...	Privileged

		<p>He's asking me questions that I don't have answers for. Each time I reach out to Alaa, and I say "Al, Alaa please I have to speak to you, please call me." Completely ignores me. And they tell me, you know, well not they but Richard tells me and he's inquisitive so I consider our relationship as a brotherhood as a bond; I've never broken that...</p>	
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In his voice notes, Weinstein repeated several times that he and Alaa ***“made up”*** what to say about the FAK deal, such as how many units were being manufactured. (Emphasis added.) Weinstein asserted privilege over these messages, which involve an entirely fake deal, none of which even conceivably involve a request for or provision of legal assistance.

Weinstein then urged Erez to speak with Hattab to convince him to meet with Weinstein before a planned meeting with Curry so that they could be on the same page and coordinate their stories. Ex. N at 2-4, 11-13 (transcriptions)

Sender	Timestamp	Content	Weinstein Claim
Weinstein (voice note)	10/28/2022 12:01:18 PM	I strongly suggest that Alaa and I talk before we meet with Richard [Curry] on Sunday. I wanna be on the same page globally. So I can conference him with you if he is comfortable. If he is more comfortable, I don't know why he can't just call me and will be on the same page if you are not involved...	Privileged
Weinstein (voice note)	10/28/2022 12:09:38 PM	...[Richard Curry] started calling me first last week asking millions of questions on the FAK. And Alaa [Hattab] and I have a bond. I would never, ever say anything aside what Alaa and I made up...	Privileged

		[In] fact I made it a thousand times better based on what Alaa and I agreed upon. If he has the time to call you, he can call me. But if he doesn't it is just gonna blow there is nothing I can do. He said, "Show me bank documents. Show me what he sent." I can, I can get away with anything the Alaa tells me to do, I need his direction.	
Weinstein (voice note)	10/28/2022 12:11:07 PMSo, ask him to be smart about it and be candid with me so I can understand what he wants me to say, and I'll keep to whatever he asks...	Privileged
Weinstein (voice note)	10/28/2022 12:12:05 PM	... That's conquer and divide is not going to work, it is going to explode. There has to be some kind of understanding between us.	Privileged
Weinstein	10/28/2022 12:23:22 PM	He needs to be on the same page with me so I know what to say. I have NEVER EVER said anything to the contrary of what he and I made up. I make him into a king every conversation.	Privileged
Erez	10/28/2022 12:24:05 PM	I will talk to him	Privileged

Weinstein again repeated that he would “never, ever say anything aside what Alaa [Hattab] and I made up.” Erez agreed to talk to Hattab. Weinstein asserted privilege over all of these messages in which he attempted to use Erez to get his story straight with Hattab.

Two days later, Erez shared a message from Hattab in which Hattab said that all Weinstein needed to say to Curry is “no money went to FAK.” Ex. N at 7-8, 13 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez	10/30/2022 9:47:53 AM	<i>Eliyahu, think about whether it pays to hold the meeting. He will [unclear abbreviation] talk about something new. Before he knows there is cash flow to him</i>	Privileged
Erez	10/30/2022 10:42:30 AM	The only thing he needs to say is no money went to FAK that's it I'm not involved in any other talk with them Eli never gave me money for FAK	Privileged
Weinstein	10/30/2022 10:51:44 AM	You are not being truthful. You are my friend. You told Ellie to say that you purchased between \$250,000 and 400,000 pieces. From day one that is what you said to say. If you changed it then let us know. You did not say from day one there is no FAK	Privileged
Weinstein	10/30/2022 10:52:36 AM	You asked Ellie for two things which he has always kept. 250k to 400k pieces and original formula deal was yours and only yours. You even told him 3 weeks ago that you've looked to Russia to try and sell it Vivian if something has changed of course he will take the blame.	Privileged
Weinstein	10/30/2022 11:18:55 AM	Allah [sic] you're my friend and we have a bond and a trust. Three things prior to you bringing Ellie into Chris's meeting was requested from Ellie by you. One was to say that there's between a 250k and 400k fak's available. You even wrote and said that you were going to borrow \$4 million to make sure you look good on that. The next you asked to say that the formula deal was yours that too he did. Lastly you said to say there was about 12 million in the machinery. Those three requests are clear. As late as last week Richard believed and believes the above. He said you're working with the Russians to sell the fak. He's trying to reach out to the buyer here thinking you have the product. If you changed any of the above we have to know. Now you're saying that	Not Privileged

		you said from day one they weren't any, that is not the case. Please always be candid with me and we will be very wealthy together. He has never said one bad word or changed anything you asked of him.	
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Hattab had further stated that “Eli never gave me money for FAK.” In response, Weinstein drafted a series of messages for Erez to communicate to Hattab claiming that Hattab had instructed Weinstein to make certain claims about the FAK deal. Weinstein further instructed Erez to tell Hattab that Hattab had told Weinstein to make three representations about the FAK and formula deal and that “[a]s late as last week Richard [Curry] believed and believes the above.”

These communications make clear that Weinstein and Erez knew full well that the FAK deal was fraudulent, and that Weinstein used Erez to help himself and Hattab concoct a story to tell Curry and Anderson. These communications furthered the fraud insofar as Weinstein enlisted Erez in convincing Hattab to speak with him so that Weinstein and Hattab could continue to coordinate their stories before talking to Curry. Again, these communications show Weinstein sought no legal advice, and that Erez was not acting as an attorney in any way, at any relevant time.

F. Weinstein Instructed Erez to Allay Curry and Anderson’s Concerns About the Fraud.

Weinstein’s communications with Erez also furthered the fraud insofar as Weinstein instructed Erez how to respond to Curry and Anderson, who were

increasingly worried about the fraud and about paying their investors back. Ex O. at 1-2.

Sender	Timestamp	Content	Weinstein Claim
Erez (forwarded message)	9/1/2022 10:53:21 AM	on the ihealth deal we needed 1 million 2 packs sale price of \$10 per pack. My understanding is there are 400k units in California. Are the other 600k units real? or is that money gone also?	Not privileged
Erez (forwarded message)	9/1/2022 10:53:21 AM	and if the product is real does the buyer still want it? I paid for that product in May I believe it has been way too long now	Not privileged
Erez	9/1/2022 10:53:36 AM	Chris	Privileged

On September 1, 2022, Erez forwarded two messages from Anderson in which Anderson expressed concern about incoming funds. Anderson asked about a particular deal “Are the other 600k units real? Or is that money gone also?” Weinstein did not assert privilege over the forwarded messages but did assert privilege over Erez’s message, which indicated the texts were from “Chris.”

In response, Weinstein dictated a message for Erez to send Anderson.

Ex. O. at 4-5.

Sender	Timestamp	Content	Weinstein Claim
Weinstein	9/1/2022 11:38:14 AM	My role in all of the above is to ensure you have the collateral and repayment as I was asked and I promised. The exact details on the deals is not something I am privy to as I understand it's mixed into many other deals etc... But I will ask the questions and get back with you.	Privileged

Weinstein	9/1/2022 11:38:27 AM	Call me to discuss	Privileged
Weinstein (forwarded message)	9/1/2022 11:40:39 AM	My role in all of the above is to ensure you have the collateral and repayment as I was asked and I promised. The exact details on the deals is not something I am privy to as I understand it's mixed into many other deals etc... But I will ask the questions and get back with you as to what I understand	Privileged
Weinstein (forwarded message)	9/1/2022 11:43:11 AM	My role in all of the above is to ensure you have the collateral and repayment as I was asked and I promised. The exact details on every deal is not something I am always privy to as I understand it's mixed into many other deals etc... But I will ask the questions and get back with you as to what I understand	Privileged
Weinstein	9/1/2022 11:43:20 AM	Call before you answer	Privileged
Erez	9/1/2022 1:43:55 PM	Chris I wasn't involved with all deals and to the last detail. I can ensure you I will get in it and get back to you with precise info. My roll here to give comfort to you all so a full trust will be built here Looking forward to meeting you	Privileged

In the message written by Weinstein, Erez claimed he had limited knowledge and was not “privy to” the “exact details” of the deals at issue. The message further stated that Erez would “ask the questions and get back to you.” Weinstein then sent several modified drafts of the message and again ordered Erez to “[C]all before you answer.” Approximately two hours later, Erez sent Weinstein the final version of the message that he sent Anderson. Like Weinstein’s drafts, the final message minimized Erez’s role, asserting that Erez “wasn’t involved with all deals and to the last detail.” But the message assured

Anderson that Erez would “get in it and get back to you with precise info.”

Weinstein asserted privilege over all these messages.

As the specific communications described above designed to manage Curry and Anderson make clear, Weinstein used Erez as a conduit to alleviate Curry and Anderson’s concern. Weinstein did so by having Erez claim limited knowledge about the deals while assuring them that he would “get to the bottom of it.” None of these messages are even arguably privileged, as they do not involve legal assistance. Instead, as in the examples discussed above, they consist of Weinstein using Erez as a conduit to communicate with others in order to accomplish the charged conspiracies.

G. Weinstein and Erez Communicated About Their Business Relationship, Which Had Nothing to Do with Seeking or Providing Legal Advice or Assistance.

The Message Thread also makes clear that Erez and Weinstein’s relationship was that of business partners and co-conspirators. For example, in March 2023, Weinstein and Erez argued because Erez believed Weinstein had not honored his commitment to a business partner (Rafi) who Erez had brought to the table. Ex P. at 1-3, 5-6 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez (voice note)	3/14/2023 8:48:58 AM	<i>You understand, Eliyahu? We made investments in coordination together. Now everything, my entire name is burned. I fight with Eric almost every other day. Now we’re not standing by [our commitment] to Raffi, even though he also talked to you and it’s burnt over there in Israel. All kinds of investment</i>	Privileged

		<i>matters. But it's just awful what's going on. And it's not only uh uh what's happening in the mess here, where I'm trying to help. You also... We have to stand by what we agree on together. Otherwise we're only lose-lose on this matter.</i>	
Weinstein	3/14/2023 9:42:17 AM	Call me please	Privileged
Weinstein	3/14/2023 10:01:02 AM	So I have the full right, based on all the delays and promised returns even since your trip in August, to demand that I get paid.	Privileged
Weinstein	3/14/2023 10:01:29 AM	Were you the recipient of the money?	Privileged
Weinstein	3/14/2023 10:01:42 AM	These payments aren't for me, they are for us.	Privileged
Weinstein	3/14/2023 10:02:45 AM	On every deal you ask "what about me". You deserve to make money, bit [sic] today you're complaining about my promises to your investments aren't timely. And people rely on the money.	Privileged
Weinstein	3/14/2023 10:03:01 AM	Explain why Eric and Rafi are different than me?	Privileged
Weinstein	3/14/2023 10:03:08 AM	In fact they are very different	Privileged
Weinstein	3/14/2023 10:03:43 AM	Because we have become family and I gave the money and I need respect	Privileged

On March 14, 2023, Erez sent a voice note stating his reputation in investment matters had been “*burned*” and that Weinstein had to “*stand by*” the decision they had made together. Weinstein pushed back in a series of responses, arguing that he had the “full right . . . to demand that I get paid.” He criticized Erez for demanding money: “On every deal you ask ‘what about me.’ You deserve to make money, bit [sic] today you’re complaining about my promises to your investments aren’t timely. And people rely on the money.” Weinstein further

criticized Erez for treating him differently than other business partners and asserted “[i]n fact they are very different” because “we have become family and I gave the money and I need respect.” Weinstein unjustifiably asserted privilege over this entire conversation.

Weinstein and Erez then continued their argument. Ex P. at 3-4, 6-8 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez (voice note)	3/14/2023 10:03:44 AM	<i>No, Eliyahu, nothing is different... I go with you 80%. I expose myself, I take... you take my name, you know you're making things out of it. And now you're telling me, you start talking as if we're on two different sides. Alright. Whatever.</i>	Privileged
Weinstein (voice note)	3/14/2023 10:09:58 AM	<i>I didn't talk about us being on two different sides. You take words and turn them upside down... Yesterday I tried to explain to you. If three million dollars comes in, then we... The entire hole fills up. We have no problem whatsoever to fulfill anything with anyone. There [would be] no limit to our profits...</i>	Privileged
Erez (voice note)	3/14/2023 10:19:17 AM	<i>...I've gone with on quite a long journey in order not to turn my back on you at the time, at the time of your mess... Now you come and tell me that you relied on the three and a half... on the three million from Morocco, while you did not tell me about it from the start. You cannot take these three million ten times and count them here and here and here. And now you're attacking me?...</i>	Privileged

Erez claimed that he had gone along with Weinstein's plan and "expose[d] himself." Erez further criticized Weinstein for using his name. In response, Weinstein pushed back on Erez's criticism and also noted that if "three million dollars comes in" then "the entire hole fills up." Weinstein asserted privilege over this entire conversation as well, without any possible justification.

As is plain from the entire Message Thread and from this conversation in particular, Erez and Weinstein never had an attorney-client relationship. To the contrary, they had a business partnership and engaged in numerous—and often fraudulent—business dealings with each other. The Message Thread, and this conversation in particular, also demonstrate that Erez sought to make money off the business deals he helped Weinstein arrange, not from a purported monthly retainer for legal services. Nothing in this Message Thread is even conceivably a communication between an attorney and his client, nor does it even remotely involve legal assistance. Weinstein's assertions of privilege are baseless.

H. From the Inception, Weinstein and Erez Lacked Any Attorney-Client Relationship, As Demonstrated By Erez's "Consulting Agreement" and Invoice.

From the very start of Erez and Weinstein's relationship in Spring 2021, it is clear that Erez and Weinstein were business partners and did not have an attorney-client relationship. Weinstein's representations to the contrary in his April 9, 2024 Declaration are wholly unsupported by the Message Thread. Weinstein did not "engage[] Erez" in Spring 2021 and "put him on a monthly

retainer” to provide “legal advice.” Decl. at ¶¶ 2, 3, 7. There was no “retainer agreement;” there was rather a purported “consulting agreement” involving a business investment in the United Arab Emirates. A \$100,000 invoice Erez sent Weinstein was for Erez’s business consulting services related to that investment—it was not for legal services. Nevertheless, Weinstein has without any rational basis asserted privilege over many of the following message threads in which Weinstein and Erez communicated regarding that UAE business deal.

After meeting in March 2021, Weinstein agreed to invest approximately \$2 million in Erez’s project in the UAE. Ex Q at 1-2, 24-25 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez (voice note)	4/14/2021 8:56:11 AM	<i>Hi Eliyahu, good morning, how are you? Uh write down for me, please, where the wire comes from, whether it's from Eliyahu personally or a company name. It doesn't matter to me, it's just that I'll notify the bank, I'll then prepare... I'll show them some meaningless piece of paper. Just so that I'll know in advance about the money that's supposed to come into the bank. So write me on WhatsApp. Thank you. Bye.</i>	Privileged
Erez	4/14/2021 1:42:38 PM	<i>Did you hear the message?</i>	Privileged
Erez	4/14/2021 1:42:43 PM	?	Not privileged
Weinstein	4/14/2021 2:05:42 PM	Yes	Privileged
Weinstein	4/14/2021 2:05:56 PM	I'm not certain yet where it will come from.	Privileged
Weinstein	4/14/2021 3:53:15 PM	MBTA Management	Privileged

On April 14, 2021, Erez inquired whether Weinstein would be wiring the initial funds for the investment personally or whether the funds would come from an entity, so that Erez could inform his bank. In response, Weinstein said he was not sure, but then provided the name “MBTA management,” a company run by Weinstein’s associate Mike Kogan. Weinstein asserted privilege over this plainly non-legal discussion regarding the source of Weinstein’s funds except for one text from Erez consisting only of a question mark.

In subsequent days, Erez began to question why Weinstein had not yet sent the funds as promised. Ex. Q at 5-8, 25 (translation).

Sender	Timestamp	Content	Weinstein Claim
Erez	4/18/2021 12:22:09 AM	Good week. Send me the receipt from the wire transfer. I will check with my bank.	Privileged
Erez	4/18/2021 4:56:49 PM	?	Not privileged
Weinstein	4/18/2021 5:16:52 PM	10 min	Privileged
Erez	4/18/2021 5:17:08 PM	Ok	Privileged
Weinstein	4/18/2021 6:16:39 PM	Mike is in the Bahamas	Privileged
Weinstein	4/18/2021 6:16:44 PM	I'm waiting for his call	Privileged
Weinstein	4/18/2021 6:16:48 PM	To verify	Privileged
Erez (voice note)	4/18/2021 6:17:27 PM	<i>Eliyahu, send me a message regarding the wire and let me know in general that you're in. You understand, we're playing with big players here, for whom money is a number, as far as they're concerned. It's insignificant. But on the other hand, if I buy him a present for his wife, then the next day I may get a fish project</i>	Privileged

		<p><i>instead of one for forty million dollars, get one for fifty million dollars...</i></p> <p><i>And I just have to know that you're in, entirely with us. Uh we are going to do very big projects but I just have to know that you're with us and that we don't have... When you say it's going through, it's going through. I have to know. If not, I have to get organized one way or another. We simply have to work in a close way, of timetables of the, the money matters because when I say something and when I say to the sheikh, "I don't need money from you," then I'm in a different place...</i></p> <p><i>But as far as you're concerned, I have to know that you're with us and that the things... When we decide that it goes through, it goes through. So let me know, please. Good night, see you.</i></p>	
Weinstein	4/19/2021 6:35:29 AM	Seems like it will leave today	Privileged
Weinstein	4/19/2021 6:35:47 AM	Will confirm in a bit when banks open	Privileged
Erez	4/19/2021 7:24:31 AM	I received your message. As I explained the original investment of 2 m with the terms we discussed stands. The latest request of upfront money as I said is a transfer issue. That at times takes time because of inner issues with Israeli transfers.	Privileged

On April 18, 2021, Erez asked Weinstein to send him confirmation of the wire and noted that he would check with his bank. Weinstein explained that he was waiting to hear from Mike Kogan, who was in the Bahamas. Erez then sent a voice note explaining that the UAE deal was significant and asked several times whether Weinstein was genuinely committed to the investment. Weinstein responded that the wire would likely be sent that day and that “[as] I explained

the original investment of 2 m with the terms we discussed stands. The latest request of upfront money as I said is a transfer issue. That at times takes time because of inner issues with Israeli transfers.” Weinstein, without any possible basis, asserted privilege over this entire conversation except for one text from Erez that contained only a question mark.

Over the ensuing days, Erez continued to question Weinstein about his failure to wire the funds for the UAE project. On April 27, 2021, Weinstein explained to Erez that Mike Kogan was planning to go to the bank, which had requested an invoice in order to transfer the funds. Ex. Q at 9. Erez responded that he would send the invoice.

Sender	Timestamp	Content	Weinstein Claim
Weinstein	4/27/2021 7:35:41 AM	Mike is going down to the bank at 11am. They are asking him for an invoice aside from the information we gave. Thus isn't our bank its the intermediary bank Standard Charter. Hope all is done today. Because if cirona [sic] he broke it into three wires. 40 40 and 20. They max at under 50 per transaction via the computer.	Privileged
Erez	4/27/2021 7:37:16 AM	Ok. will send you invoice no prob	Privileged

Weinstein asserted privilege over these non-legal messages as well.

On April 28, 2021, Erez sent Weinstein the invoice and related contract for Weinstein to provide the bank to wire the funds. Ex. Q at 16-19.

Sender	Timestamp	Content	Weinstein Claim
Erez	4/28/2021 9:05:17 AM	Your email?	Privileged
Erez	4/28/2021 9:05:39 AM	Or send it here?	Privileged
Weinstein	4/28/2021 9:10:40 AM	Send it here	Privileged
Erez	4/28/2021 9:18:48 AM	Ok	Privileged
Erez	4/28/2021 9:36:46 AM	[MBTA Consulting Agreement]	Not privileged
Erez	4/28/2021 9:36:46 AM	[Invoice]	Not privileged
Weinstein	4/28/2021 9:38:44 AM	Ok	Privileged

Erez first asked Weinstein whether to send it via email or over WhatsApp.

Weinstein instructed him to send it over WhatsApp. Erez then sent an invoice and contract for a “Consulting Agreement” purportedly between Erez and MBTA Management stating that Erez would provide “consulting services” with respect to the UAE business deal. The contract detailed the nature of Erez’s consulting services and included a “Relationship of the Parties” provision which states: “The parties acknowledge that they ar [sic] independent contractors and **no [sic] other relationship**, including partnership, joint venture, employment, franchise or principle[sic]/agent in intended by this Agreement.” Ex. Q at 20-22 (emphasis added). Notably, the contract included signature blocks for “Shlomo Erez” to sign on behalf of Erez and “Eliyahu Tabak” to sign on behalf of MBTA because, at the time, Erez was under the false impression that Weinstein’s name

was “Eliyahu Tabak.” Ex. Q at 22. The invoice was similarly for a “consulting fee agreement” in the amount of \$100,000. Ex. Q at 23.

It is clear from these conversations that the money was for Weinstein’s investment in the UAE project. It is true that on two occasions, Erez instructed Weinstein to wire him \$100,000 to his Israeli bank account toward the investment and to write “legal advice” for the wire memo. Based on Erez’s limited proffer and the other evidence discussed here, however, Erez offered Weinstein no “legal advice” whatsoever. The “legal advice” notation was merely a sham. Yet while Weinstein did not assert privilege over the Consulting Agreement and invoice itself, he asserted privilege over all related messages.

As is evidenced by these conversations, Weinstein and Erez’s relationship started as a business relationship: Weinstein had promised to invest \$2 million in Erez’s UAE project through MBTA. Their relationship would later grow into a joint fraudulent conspiracy.

In fact, the “Consulting Agreement” that Erez sent Weinstein is the only written agreement between the two regarding Erez’s services. And even by its own terms, there was explicitly no attorney-client relationship.²² Weinstein’s claim, Decl. at ¶¶ 2, 3, 7, that he “engaged Erez” in Spring 2021 and “put him on a monthly retainer” to provide “legal advice” is not just false—it is risible.

²² Further support for this conclusion is found in both Wittels’s and Erez’s affidavits, which explain that Optimus paid Erez a \$7,500 monthly fee for business services and consulting, not legal services or advice. Erez Declaration, Gov. Reply Br., Exhibit D, ECF No. 102-4; Wittels Declaration, Gov. Letter Regarding Privilege, Exhibit A, ECF No. 107-1.

CONCLUSION

The Message Thread makes abundantly clear that Erez was not serving as Weinstein's counsel and that Weinstein did not seek or obtain legal assistance from Erez. In reviewing "the manner in which a person is hired and the resulting services that are performed" to assess whether an attorney-client relationship exists, it is evident that Erez was not retained as a lawyer and the "services" he provided were in no way legal services. *Montgomery Cnty. v. MicroVote Corp.*, 175 F.3d 296, 302 (3d Cir. 1999). As the examples set forth above demonstrate, Weinstein and Erez were business partners and co-conspirators. Weinstein did not hire Erez to be his lawyer in 2021 as he claims; instead, the two began a business relationship, agreeing to invest jointly in Erez's business project in the UAE.

The "services" Erez provided included: diverting investor funds at Weinstein's direction to, among other things, purchase a Florida penthouse and land in Morocco; assisting with purchasing and delivering diamond jewelry with diverted investor funds; lying to co-conspirators; and emailing misrepresentations to appease investors. Even putting aside their patently fraudulent nature, these activities could not possibly be construed as legal services. Whether an attorney-client relationship exists is a fact-based inquiry. The facts here developed from the Message Thread wholly corroborate both Erez's statements under oath during his plea hearing that he never served as Weinstein's lawyer and Wittels's affidavit stating that there was no attorney-

client relationship with Erez on behalf of Optimus. Weinstein, who bears the burden of showing the existence of an attorney-client relationship, *see Matter of Bevill*, 805 F.2d at 126, and who has had the Message Thread for three months, has proffered nothing to overcome this conclusion.

Even if this Court were to find that Erez and Weinstein had an attorney-client relationship, Weinstein still bears the burden of showing that their communications on Erez's device were privileged because they were "for the purpose of obtaining or providing legal assistance." *In re Teleglobe Commc'n Corp.*, 493 F.3d 345, 359 (3d Cir. 2007) (cleaned up). Weinstein's counsel's broad and baseless assertions of privilege in the privilege log do not identify any communication in which Weinstein sought legal assistance from Erez. Instead, Weinstein's counsel asserted privilege over thousands of messages between two business associates and co-conspirators, such as instructions from Weinstein to Erez about where to wire funds for various business deals.

Weinstein claims Erez provided transactional legal services, such as contract negotiations and contract drafting. However, the examples cited above demonstrate that to the extent Erez was involved in drafting contracts, they were sham contracts. Ironically, often it was Wittels, Bromberg, and Weinstein who drafted documents for Erez to sign, without even affording Erez the opportunity to edit or correct them. Erez provided no legal assistance in drafting, for example, the communication for the Maccabi deal. Even where an attorney has a bona fide attorney-client relationship, the client's

communications are not privileged when they are “transmitted to an attorney with the intent that the information will be transmitted to a third party.” *White*, 970 F.2d at 334 (cleaned up). Nor are “actions taken by an attorney to transfer funds,” *Warren*, 265 F. Supp. 3d at 23; or non-legal business advice, *Spencer*, 700 F.3d at 320 (even an attorney acting as “as a conduit for a client’s funds . . . or as a business advisor” is not providing legal advice).

Finally, even assuming that Erez and Weinstein had an attorney-client relationship and assuming Weinstein could point to any communications on Erez’s device that were for the purpose of obtaining or providing legal assistance, which he still has not done, it is clear that Weinstein’s communications with Erez unambiguously fit within the crime-fraud exception to the attorney-client privilege. Erez pled guilty to conspiring with Weinstein to obstruct justice and defraud investors. The Message Thread excerpted and summarized above amply corroborates Erez’s sworn plea colloquy and declaration stating that he was not functioning as Weinstein’s counsel, and they more than meet the standard necessary to vitiate the privilege. There is “a reasonable basis to suspect that” (1) Weinstein and Optimus committed or intended to commit a crime or fraud, and (2) their communications with Erez were in furtherance of that crime or fraud. *In re Grand Jury (ABC Corp.)*, 705 F.3d 133, 153-54 (3d Cir. 2012). Weinstein instructed Erez to lie about his identity, to divert investor funds, to lie to co-conspirators, and to draft false statements invoking Erez’s status as an attorney to appease investors. In

addition to demonstrating that Erez was assisting Weinstein in defrauding investors, the Message Thread shows that Weinstein was using Erez to help him obstruct justice by engaging in multi-million-dollar deals hidden from the Probation Office, rather than paying the over \$200 million in restitution he still owed his prior victims.

The examples contained in this motion are only a snapshot of the thousands of messages between Erez and Weinstein in furtherance of the fraud. But they provide more than enough of a basis “to satisfy both elements of the crime-fraud exception without resort” to a document-by-document review of the entire Message Thread. *In re Chevron Corp.*, 633 F.3d 153, 167 n.19 (3d Cir. 2011).²³ Indeed, as this Court noted at oral argument, once the Government makes the necessary showing, the crime-fraud exception was “designed to obviate the need” to conduct such a laborious review. Oral Arg. Tr. at 43, ECF No. 128.

Because Weinstein and Erez never had an attorney-client relationship and, even if they did, their communications are subject to the crime-fraud exception, Weinstein’s ambiguous assertion of a “joint representation” with Optimus necessarily fails. Decl. at ¶ 9. It is axiomatic that a joint

²³ Contrary to Weinstein’s counsel’s assertions, this Court need not assume the burden of reviewing all 19,205 messages in the Message Thread to determine whether they are privileged. But if the Court would like to conduct such a review, the Filter Team is happy to produce the full Message Thread (although much of it is in Hebrew and has not been translated other than for purposes of this submission).

representation of multiple clients can exist only where the parties are in fact legal clients. Since Weinstein and Erez never had an attorney-client relationship, Erez could not have jointly represented Weinstein and Optimus. Although the Government is mindful of the need to protect the attorney-client privilege and respectful of confidential attorney communications, “the public has an interest in the fair and expeditious administration of the criminal justice laws.” *United States v. Dionisio*, 410 U.S. 1, 17 (1973); *see also Cobbedick v. United States*, 309 U.S. 323, 325 (1940) (“An accused is entitled to scrupulous observance of constitutional safeguards. But encouragement of delay is fatal to the vindication of the criminal law.”). Here, the fact that Weinstein asserted privilege over almost 15,000 messages (seventy-seven percent of the Message Thread) that were plainly not attorney-client communications for the purpose of obtaining or providing legal assistance, demonstrates the frivolous nature of those assertions.²⁴

As a result, Weinstein’s conclusory, unsubstantiated, and frivolous claim that his co-conspirator Erez was acting as his attorney appears intended—for no legitimate reason—to prevent the Prosecution Team from accessing highly incriminating evidence to which the Prosecution Team is legally entitled pursuant to a judicially authorized search warrant. Moreover, Weinstein’s

²⁴ Cf. *Wharton v. Superintendent Graterford SCI*, 95 F.4th 140, 147-148 (3d Cir. 2024) (an attorney who makes objectively unreasonable representations to the Court that he or she knows or should have known are false or wholly unsupported is subject to sanctions under Rule 11).

baseless claims appear intended to prevent the Prosecution Team from fully debriefing Erez on issues central to the prosecution and preparing for trial in advance of a firm November trial date.

RELIEF REQUESTED

For these reasons, the Filter Team renews the application made in the Prosecution Team Motion for immediate rulings that: (1) Weinstein's communications with Erez are not privileged and/or are subject to the crime-fraud exception; and (2) Weinstein cannot establish a joint-representation privilege.

Respectfully submitted,

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UNITED STATES ATTORNEY

By: /s/ Chana Y. Zuckier
Chana Y. Zuckier
John Maloy
Assistant U.S. Attorneys
Filter Team

CERTIFICATION OF FILING AND SERVICE

I hereby certify that on August 30, 2024, I caused the sealed Motion for the Government Filter Team and Exhibits to be filed with the U.S. District Court for the District of New Jersey by sending it via email to James Balfour, Deputy Clerk for the Honorable Michael A. Shipp, U.S.D.J.

I also certify that on August 30, 2024, I personally caused to be served on counsel for Defendant, Eliyahu Weinstein, a true and accurate copy of the Motion for the Government Filter Team and Exhibits via email to:

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/s/ Chana Y. Zuckier
Chana Y. Zuckier
Assistant U.S. Attorney

Dated: August 30, 2024